



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

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REPLY TO THE ATTENTION OF:

C-14J

November 21, 2002

Lisa McKinney Goldner
Bose McKinney & Evans LLP
2700 First Indiana Plaza
135 North Pennsylvania Street
Indianapolis, Indiana 46204

Re: Gary Development Landfill Site
479 North Cline Avenue, Gary, Indiana

Dear Ms. McKinney Goldner:

This letter responds to your letter to Ms. Debra Regel dated September 30, 2002 regarding the Gary Development Landfill Site (the Site). On September 11, 2002, the Environmental Protection Agency issued a General Notice letter to your clients, Mr. Nanini and Mr. Lawrence Hagen, notifying them of their potential liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 et seq. (CERCLA) and asking them to undertake or finance the time-critical removal action at the Site, as described in the General Notice letter. Your letter to Ms. Regel appeared to indicate that Mr. Nanini and Mr. Hagen were declining to undertake or finance the time-critical removal at the Site. This letter serves to inform you that the United States Environmental Protection Agency (EPA) conducted the time-critical removal action at the Site.

In your letter, you further indicated that the Resource Conservation and Recovery Act, 42 U.S.C. 6901-6992 (RCRA) Consent Decree entered into by EPA and Gary Development Company, Inc. (Gary Development) on July 7, 1997 (the Consent Decree), relating to the landfill operations at the Site resolved "the matter as it relates to [Mr. Nanini and Mr. Hagen]." As described in the introductory language of the RCRA Consent Decree, the Consent Decree arose from an EPA RCRA May 30, 1986 "complaint and compliance order issued to the Gary Development Company alleging that the company had unlawfully accepted hazardous waste for disposal at the landfill which had neither achieved interim status under the Resource

Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901-6992, nor obtained a RCRA permit."

Paragraph 26 of the Consent Decree states that as to all matters other than those set forth in paragraphs 19-22, "this Consent Decree is *without prejudice to, and the United States expressly reserves, all claims or rights relating to the release, threat of release or presence of hazardous substances, contaminants, pollutants or wastes at the Site.*" Paragraph 26 of the Consent Decree further provides that this reservation specifically includes EPA's claims and rights under CERCLA relating to the Site stating that "(t)his reservation includes, but is not limited to, the claims or rights of EPA and any Federal natural resource trustee under (CERCLA), or under any other federal environmental law."

The matters addressed in paragraphs 19-22 are:

paragraph 19 - EPA's agreement not to enforce the May 30, 1986 RCRA complaint and compliance order;

paragraph 20 - EPA's agreement that Gary Development's payment of a penalty satisfied the April 8, 1996 Decision and Order;

paragraph 21 - EPA's agreement to waive its right to initiate a civil judicial action to seek any penalties resulting from Gary Development's failure to comply with the May 30, 1986 Complaint and Compliance Order; and

paragraph 22 - EPA's agreement to bear its own costs and attorneys fees relating to the Consent Decree.

The General Notice letters issued to Mr. Nanini and Mr. Hagen informed them of their *potential liability* under CERCLA for a time-critical removal action and did not refer to any action under RCRA, a RCRA penalty or any other matter in paragraphs 19-22 of the Consent Decree. Therefore, it does not appear that the Consent Decree restricted EPA's claims or rights under CERCLA relating to the Site. However, this letter is not a demand for reimbursement for the costs of the removal action since EPA is investigating what wastes were remaining at and near the Site's buildings at the time of the RCRA settlement and who disposed of such wastes.

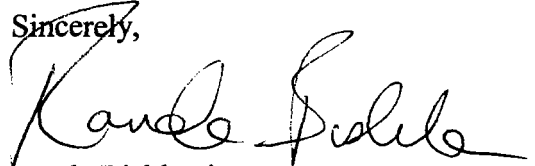
In your letter you have stated that as of the date of the RCRA settlement, "there was no waste remaining on the site." Many of the drums and small containers addressed in the recent time-critical removal action were located in the buildings at the Site used by Gary Development Company. These containers and drums contained insecticides, paints, roofing cement, freon cylinders, drain cleaners, windshield wiper fluid, electrical capacitors and similar materials which would usually be associated with running the office and machinery at the landfill. We are currently investigating whether such materials were abandoned at the Site in late 1996 and 1997 by the Gary Development Company.

In connection with this investigation, as well as a possible CERCLA investigation of the wastes and environmental conditions at the Site's landfill, U.S. EPA anticipates issuing Section 104(e) Information Requests in the near future to Mr. Hagen Jr., Mr. Hagen Sr. and Mr. Nanini to

determine whether these individuals recall leaving the wastes described above in the buildings at the Site in 1996 or 1997 *and* to identify the generators and transporters of the wastes that were disposed of in the Site's landfill. With respect to your comments regarding the questioning of Mr. Lawrence Hagen, Jr., I have discussed this matter with Mr. Reginald Arkell, our civil investigator. Mr. Arkell has assured me that at no time did he threaten Mr. Hagen with arrest or criminal sanctions. Information gathering regarding the Site is authorized under Section 104(e) of CERCLA, 42 U.S.C. 9604(e).

If you have any questions regarding these matters, please call me at (312) 886-0510.

Sincerely,

A handwritten signature in black ink, appearing to read "Randa Bishlawi", written in a cursive style.

Randa Bishlawi
Associate Regional Counsel

cc: Anita Boseman SE-5J
Debbie Regel, SE-5J